

**FREEDMAN & TAITELMAN, LLP**

Michael A. Taitelman, Esq. (SBN 156254)

Jesse A. Kaplan, Esq. (SBN 255059)

1901 Avenue of the Stars, Suite 500

Los Angeles, CA 90067

Telephone: (310) 201-0005

Facsimile (310) 201-0045

**MARKS & KLEIN, LLP**

Justin M. Klein, Esq.

David S. Paris, Esq.

63 Riverside Drive

Red Bank, New Jersey 07701

Pending *pro hac vice* admission

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

ROBERT DILLON, Individually and on  
behalf of all others similarly situated,

Plaintiffs,

vs.

LIFELOCK, INC., a Delaware Corporation;  
RICHARD TODD DAVIS, a citizen of the  
State of Arizona, and JOHN DOES 1 through  
10, Inclusive,

Defendants.

**CASE NO.: 2:08-cv-4515-SVW (AJWx)**

**FIRST AMENDED CLASS ACTION  
COMPLAINT AND JURY DEMAND**

1 Plaintiff, Robert Dillon, individually, and on behalf of all others similarly situated, by and  
2 through his counsel, Marks & Klein, LLP, and Freedman & Taitelman, LLP, hereby submits this  
3 First Amended Complaint against Defendants, LifeLock, Inc., Richard Todd Davis, and John  
4 Does 1 through 10 (collectively, "Defendants"). In support thereof, Plaintiff alleges as follows:

#### 5 INTRODUCTION

6 1. This is a class action lawsuit brought by, and on behalf of, California subscribers  
7 of LifeLock, Inc. ("LifeLock"), a company that holds itself out as "the industry leader in the  
8 rapidly growing field of Identity Theft Protection."

9 2. This matter arises from the deceptive business practices and fraudulent  
10 advertising campaign implemented by LifeLock, its agents, employees, and representatives,  
11 through which it has induced nearly one million individuals, including the Plaintiff and the  
12 putative class in the state of California, into subscribing to the identity theft protection services  
13 the company purportedly provides.

14 3. To induce consumers across the country to subscribe to its services, LifeLock  
15 claims in its advertisements that it will prevent any possibility of identity theft, in any form.

16 4. In LifeLock's ubiquitous marketing campaign, the company's Chief Operating  
17 Officer ("CEO"), Richard Todd Davis ("Davis"), cavalierly broadcasts his own social security  
18 number -- 457-55-5462 -- on television and radio stations across the country, proclaiming his  
19 unwavering confidence in LifeLock's purported protections.

20 5. In reality, however, LifeLock simply does not provide the level of identity  
21 protection that it advertises in its deceptive marketing campaign.

22 6. Contrary to the all-encompassing identity protection LifeLock promotes in every  
23 one of its advertisements, its protection only extends to limited, credit-related instances of "new-  
24 account" identity theft.

25 7. Even in those limited credit-related instances, LifeLock does not necessarily  
26 protect its subscribers' identities as advertised.

27 8. Indeed, the representations made by LifeLock's CEO are false and misleading  
28 because his own identity was stolen while he was a LifeLock customer.

1           9. While LifeLock has only publicly acknowledged that Davis's identity was  
2 compromised on one (1) occasion, there are more than twenty (20) driver's licenses that have  
3 been fraudulently obtained through the misappropriation of Davis's personal information.

4           10. Furthermore, a simple background check performed using Davis's social security  
5 number reveals that his entire personal profile has been compromised to the extent that the birth  
6 date associated with his social security number is November 2, 1940, which inaccurately makes  
7 Davis 67 years old. This inaccurate information can most certainly be attributed to a  
8 misappropriation of Davis's social security number.

9           11. In addition to its inability to provide the level of protection it advertises, each of  
10 LifeLock's advertisements fails to disclose and intentionally omits from its advertisements the  
11 potential harms that its services may have on consumers.

12           12. As described in further detail below, LifeLock's services can actually have an  
13 adverse impact on the consumer's ability to obtain credit or favorable interest rates.

14           13. Furthermore, in its advertisements, LifeLock fails to adequately advise or make  
15 clear to consumers that they could perform each of LifeLock's services on their own, free of  
16 charge.

17           14. Instead, in the few recent advertisements in which LifeLock does allude to this  
18 fact, LifeLock preys on consumer fears and misleads potential subscribers into believing that the  
19 services it provides embody a complicated, time-consuming process that require LifeLock's  
20 "expertise" and assistance.

21           15. LifeLock also fails to adequately disclose and intentionally omits from its  
22 advertisements the fact that the credit reports it orders on behalf of the subscribers is the free  
23 annual credit report, which subscribers are entitled to receive when placing their own fraud  
24 alerts, pursuant to 15 U.S.C. §1681c-(a)(2)(B).

25           16. As a result, when LifeLock orders the free annual report, it renders the subscribers  
26 ineligible to order their free report for the next twelve months. This fact is not disclosed to  
27 subscribers.

28           17. Every one of LifeLock's advertisements also fails to adequately disclose and

1 intentionally omits the true nature and limited scope of its \$1,000,000 service guarantee.

2 18. In fact, the deceptive and misleading message that is broadcast through each of  
3 LifeLock's advertisements – which purports to guarantee LifeLock's services up to \$1,000,000 –  
4 is starkly contradicted by LifeLock's own deceptive and misleading terms, which severely limit  
5 the scope and application of the "guarantee" due to the numerous restrictions, limitations, and  
6 waivers that are present within its terms.

7 19. Finally, LifeLock fails to disclose that the methods it employs in providing its  
8 purported protection are improper and violate the Fair Credit Reporting Act, 15 U.S.C. §1681, et  
9 seq.

10 **JURISDICTION, VENUE, AND PARTIES**

11  
12 20. This Court has original jurisdiction over this matter, under 28 U.S.C. § 1332(d)(2),  
13 as the matter in controversy exceeds Five Million Dollars (\$5,000,000.) exclusive of costs and  
14 interest, and is a class action where at least one member of the class of plaintiffs is a citizen of a  
15 State different from any defendant.

16 21. This Court has personal jurisdiction over defendants in that defendants conduct  
17 business in this District, defendants intentionally direct activities to this District, and the conduct  
18 upon which the allegations in this Complaint are based occurred in this District.

19 22. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b) in that this is the  
20 District in which a substantial part of the events or omissions giving rise to the claims hereinafter  
21 set forth occurred.

22 23. Plaintiff Robert Dillon ("Dillon") is a citizen of the State of California, and a  
23 resident of Contra Costa County.

24 24. Plaintiff Dillon enrolled as a LifeLock subscriber in 2008.

25 25. Plaintiff Dillon is a proper party plaintiff to this action because he has suffered  
26 losses as a result of LifeLock's unlawful conduct alleged herein.

27 26. Defendant LifeLock is a Delaware corporation with its principal place of  
28 business at 60 E. Rio Salado Parkway, Tempe, Arizona 85281.

1        27. Defendant LifeLock maintains its principal place of business in Arizona and  
 2 transacts substantial business within California and, specifically within this Los Angeles  
 3 County, and is amenable to personal jurisdiction in California.

4        28. Defendant Davis is a resident of Chandler, Arizona. Defendant Davis is the  
 5 Chief Executive Officer of LifeLock. Davis transacts business within the State of California  
 6 and has specifically availed himself to the courts of this State.

7        29. The true names and capacities, whether individual, corporate, associate or  
 8 otherwise, of Defendants named as JOHN DOES 1 through 10, inclusive, are unknown to  
 9 Plaintiff and the putative class who, therefore, sue those Defendants by such fictitious names.

10        30. Plaintiff and the putative Class are informed and believe and thereon allege  
 11 that each Defendants sued herein as JOHN DOES 1 through 10 are and were the agents  
 12 and/or employees of each and every other Defendant and were at all relevant times acting  
 13 within the course and scope of such agency and employment, and/or are legally responsible  
 14 in some manner for the events and happenings herein referred to, and caused injuries and  
 15 damages proximately thereby to Plaintiff and the putative Class as alleged herein.

16        31. Plaintiff will seek to amend this Complaint to allege the true names and  
 17 capacities of such Defendants when ascertained.

### 18        **THE HISTORY OF LIFELOCK**

19        32. In or about 2005, Defendant Davis and his colleague Robert J. Maynard, Jr.  
 20 ("Maynard") founded LifeLock.

21        33. According to the company's website, LifeLock is the "industry leader" in  
 22 "proactive identity theft protection, specializing in prevention of identity theft rather than the  
 23 reporting of it."<sup>1</sup>

24        34. LifeLock further claims that its identity theft protection system was developed as  
 25 a result of "more than three years" of "solid research" and building "relationships with the right  
 26 organizations."<sup>2</sup>

27  
 28 <sup>1</sup> (<http://www.lifelock.com/lifelock-for-people/who-we-are/who-is-lifelock>, as of July 7, 2008).

<sup>2</sup> (<http://www.lifelock.com/lifelock-for-people/who-we-are/who-is-lifelock>, as of July 7, 2008).

1           35. Since its inception, LifeLock's purported "goal" has been "to lock down every  
2 individual's private information so no person except that individual can approve its use."<sup>3</sup>

### 3                           LIFELOCK'S NEFARIOUS ORIGIN

4           36. Throughout its countless hours of advertising, LifeLock never discloses any of the  
5 less propitious information about its origin or its founding member, Robert Maynard  
6 ("Maynard").

7           37. At the time Maynard founded LifeLock, he was, and presently remains, subject to  
8 an injunction obtained by the FTC banning him for life from "advertising, promoting, offering  
9 for sale, selling, performing, or distributing any product or service relating to credit improvement  
10 services."

11           38. The injunction issued against Maynard resulted from his production of misleading  
12 infomercials regarding the services provided by his credit improvement company, National  
13 Credit Foundation.

14           39. Upon information and belief, these harsh sanctions were also meant to penalize  
15 Maynard for engaging in a scheme through which he arranged unauthorized withdrawals from  
16 customer accounts at National Credit Foundation.

17           40. Upon further information and belief, Maynard himself has engaged in the very  
18 type of identity theft that his company purportedly sets out to eliminate, by stealing his own  
19 father's identity.

20           41. Specifically, upon information and belief, Maynard misappropriated his father's  
21 identity to obtain an American Express card.

22           42. Maynard then ran up over One Hundred Thousand Dollars (\$100,000.00) in debt  
23 on the charge card.

24           43. Eventually, American Express sued Maynard's father in an effort to recover the  
25 balance.

26           44. Finally, and perhaps most disturbing, is that Maynard's "story" about how  
27 LifeLock was founded was a **bold faced lie**, which was widely disseminated to the public by  
28 Maynard himself, as well as CEO Davis and other LifeLock executives.

---

<sup>3</sup> Id.

1 45. Specifically, Maynard, along with Davis<sup>4</sup>, and LifeLock Vice-President of  
2 Communications Mike Prusinski, spun a fictitious tale in the press, maintaining that Maynard  
3 founded LifeLock after he was falsely arrested as a victim of identity theft.

4 46. In actuality, Maynard's "false arrest" turned out to be an actual arrest, which  
5 involved **absolutely no incidence of identity theft**.

6 47. Rather, upon information and belief, Maynard was arrested and imprisoned for  
7 seven (7) days for failing to pay a \$16,000 casino marker at the Mirage Hotel and Casino.

8 **THE SERVICES LIFELOCK PROVIDES**

9 48. According to the company's official website, a general LifeLock subscription  
10 provides four (4) services that are designed to protect its subscribers from identity theft.

11 49. First, LifeLock "ask[s] the credit bureaus to set free fraud alerts on [the  
12 subscriber's] behalf."

13 50. Second, LifeLock renews those fraud alerts "every 90 days or so."

14 51. Third, LifeLock requests that subscribers' names be removed from pre-approved  
15 credit card and junk mail lists.

16 52. Fourth, every year, LifeLock orders free credit reports, on behalf of its  
17 subscribers, from the major credit bureaus.

18 **LIFELOCK MISREPRESENTS THE SCOPE OF ITS SERVICES**

19 53. LifeLock deceptively markets its services through: (a) its website located at  
20 www.lifelock.com; (b) affiliated web pages; (c) press releases; (d) news publications; (e)  
21 television commercials; and (f) radio advertisements.

22  
23 <sup>4</sup> Various examples of Defendant Todd Davis recanting the false story regarding LifeLock's  
24 founding are readily accessible on the internet. For example, Davis was quoted saying: "My co-  
25 founder, Robert Maynard, who is our Chief Marketing Officer, he actually had his identity stolen  
26 in 2001. He had to spend seven days in jail, because someone had stolen his identity and opened  
27 up lines of credit at a Las Vegas casino. So Robert thought there was something we could do to  
28 protect consumers. So about 2 1/2 years ago, we got together, and we also brought in the former  
vice chairman of Bank of America--who is now the chairman of our board--and the former Chief  
Information Officer of Visa, and developed this technology. We incorporated in April of 2005,  
and we are now the fastest growing identity theft protection company and add a new subscriber  
every two minutes." (<http://www.techrockies.com/story/0007560.html>, as of July 7, 2008).

1           54. LifeLock knows, yet fails to disclose, that the services it provides do not offer the  
2 breadth of protection that it promotes through its massive advertising campaign.

3           55. The primary service that LifeLock provides to protect against identity theft is the  
4 placement and renewal of fraud alerts on subscribers' credit profiles.

5           56. The representations made in LifeLock's advertisements regarding the scope and  
6 effectiveness of fraud alerts are misleading and fail to disclose material facts regarding the  
7 limitations inherent in the service.

8           57. Through every one of its advertisements, LifeLock misrepresents and assures  
9 consumers that it can protect against all types of fraud. These representations are false.

10           58. In actuality, the fraud alerts LifeLock places only work to combat credit-related,  
11 new account identity theft, which is merely one form of theft amongst many others, including:  
12 (a) bank account related identity theft; (b) employment related identity theft; (c) medical  
13 information related identity theft; (d) government documents or benefits identity theft, and (e)  
14 computer and telecommunication related theft

15           59. There is no conspicuous mention of this fact, nor any disclaimer in the wealth of  
16 information regarding LifeLock's services on the company website or in LifeLock's  
17 advertisements.

18           60. In contrast, LifeLock's advertisements deceptively create the illusion that  
19 LifeLock provides complete and comprehensive identity protection against all forms of theft, by  
20 employing misrepresentations that include, but are not limited to, the following:

21           (a) "Here's a report I have on John Sheiper, a young hacker – sent out a virus,  
22 put more than 250,000 computers to work stealing passwords to bank  
23 accounts from people around the world;"<sup>5</sup>

24  
25           (b) "LifeLock's own CEO is so positive our service secures identities that he  
26 has broadcast his social security number on our homepage, in our  
27 commercials, and in our media spots because he wants to prove that we  
28

---

<sup>5</sup> LifeLock radio advertisement.

1 can protect anyone's identity from scammers, thieves, and hackers;"<sup>6</sup>

2  
3 (c) "This very second, someone could be using your identity to...clear out  
4 your bank accounts...Stop it from happening now. Call LifeLock...;"<sup>7</sup> and

5  
6 (d) "LifeLock, the industry leader in proactive identity theft protection, offers  
7 a proven solution that prevents your identity from being stolen before it  
8 happens."<sup>8</sup>

9 (e) "One victim even had his identity stolen by a man who went on to commit  
10 rape and murders using the victim's name... LifeLock's proactive  
11 approach to identity theft protection and \$1 Million Total Service  
12 Guarantee helps reduce the risk of members becoming victims of [these]  
13 **exact scenarios**, as well as the money and time used to restore their good  
14 name."<sup>9</sup>

15  
16 **LIFELOCK MISREPRESENTS THE EFFECTIVENESS OF ITS SERVICES**

17  
18 61. Through its deceptive advertisements and marketing tools, LifeLock  
19 misrepresents the effectiveness of the services it provides.

20 62. LifeLock knows, yet fails to disclose in each of its advertisements, that the  
21 services it provides do not offer the comprehensive level of protection that is advertised to  
22 consumers through its massive advertising campaign.

23  
24  
25 <sup>6</sup> See [http://lifelockprotection.wordpress.com/2007/11/10/lifelock-protect-your-good-](http://lifelockprotection.wordpress.com/2007/11/10/lifelock-protect-your-good-name)  
26 name, as of July 7, 2008.

27 <sup>7</sup> LifeLock radio advertisement.

28 <sup>8</sup> See <http://www.lifelock.com/default.aspx?promocode=Shareasale&SSAID=252168>,  
as of July 7, 2008.

<sup>9</sup> <http://www.lifelock.com/todd-davis?promocode=ADCONION>, as of July 7, 2008.  
(emphasis added).

1           63. Specifically, LifeLock misrepresents that its subscribers will receive a telephone  
2 call each time his or her personal information is used to apply for new credit.

3           64. LifeLock fails to advise subscribers that companies and institutions that issue  
4 credit **are not required by law** to contact them, even if they have fraud alerts in place.

5           65. LifeLock's misrepresentations regarding the effectiveness of its services include,  
6 but are not limited to, the following:

7           (a) "Once fraud alerts have been placed, you will receive a phone call — most  
8 people register their cell phone numbers — anytime someone tries to open  
9 a credit line in your name;"<sup>10</sup>

10  
11           (b) "If it's you trying to open the account, then you'll get the call *while you're*  
12 *standing there*;"<sup>11</sup>

13  
14           (c) "The alert *ensures* you will receive a phone call *whenever* someone —even  
15 you-tries to establish using your identifying information...;"<sup>12</sup>

16  
17           (d) "When someone seeks to open a new account, the creditor *will call* to  
18 confirm that it's really you through a series of identifying questions;"<sup>13</sup>

19  
20           (e) "If someone is trying to use your personal information, you will be  
21 contacted by the creditor that is issuing the line of credit;"<sup>14</sup>

22  
23 <sup>10</sup> Statement by Defendant Davis, CEO of LifeLock, Inc., in article entitled "Fraud alerts can  
24 protect ID," [www.azstarnet.com/business/202488](http://www.azstarnet.com/business/202488), as of July 7, 2008.

25 <sup>11</sup> Statement by Defendant Davis, CEO of LifeLock, Inc., in article entitled "Fraud alerts can  
26 protect ID," [www.azstarnet.com/business/202488](http://www.azstarnet.com/business/202488), as of July 7, 2008. (Emphasis added.)

27 <sup>12</sup> See [www.mylifelock.org](http://www.mylifelock.org), as of July 7, 2008. (Emphasis added.)

28 <sup>13</sup> Statement by Defendant Davis, CEO of LifeLock, Inc., in article entitled "Protecting identity  
among the tell-all generation," [www.startribune.com/templates/Print This Story?sid=1191451](http://www.startribune.com/templates/Print%20This%20Story?sid=1191451), as  
of July 7, 2008. (Emphasis added.)

<sup>14</sup> See [http://www.lifelock.com/lifelock-for-people/what-to-expect/who-calls-me-to-let-me-know-  
that-someone-is-attempting-to-obtain-credit-in-my-name](http://www.lifelock.com/lifelock-for-people/what-to-expect/who-calls-me-to-let-me-know-that-someone-is-attempting-to-obtain-credit-in-my-name), as of July 7, 2008.

1 (f) "You will know whenever anyone tries to use your credit before damage is  
2 done;"<sup>15</sup>

3 (g) "The most important difference between LifeLock and other fraud  
4 protection services is our proactive approach to identity theft. LifeLock is  
5 not a credit monitoring service that alerts you when we find a problem, we  
6 actually stop crime *before it happens by having the credit bureaus alert*  
7 *you* when someone tries to make changes in your status or inquire about  
8 your credit;"<sup>16</sup> and

9 (h) "We start by putting fraud alerts on your information with all three of the  
10 major credit card bureaus and ChexSystems, allowing only you to be able  
11 to apply for credit lines or make changes to your accounts. This is the  
12 most important step in our service because it prevents thieves from being  
13 able to use your identity, since the fraud alert *requires creditors to contact*  
14 *you* by the phone number listed on LifeLock's report before verifying any  
15 changes, such as extending limits or changing billing addresses."<sup>17</sup>

16  
17 **LIFELOCK CONCEALS AND OMITTS THE POTENTIAL HARMS THAT ITS**  
18 **SERVICES COULD HAVE ON SUBSCRIBERS' CREDIT PROFILES**  
19

20 66. Through its deceptive advertisements and marketing tools, LifeLock conceals and  
21 omits the adverse effects that its services could have on its subscribers' credit profiles.

22 67. LifeLock knows yet fails to disclose that the services it provides can have an  
23 adverse impact on a subscriber's credit profile.  
24  
25

26 <sup>15</sup> See <http://www.idtheftquiz.org>, as of July 7, 2008.

27 <sup>16</sup> See <http://lifelockprotection.wordpress.com/2007/11/10/lifelock-protect-your-good-name>, as  
28 of July 7, 2008.

<sup>17</sup> See <http://lifelockprotection.wordpress.com/2007/11/01/comparing-lifelock/>, as of July, 7  
2008. (Emphasis added.)

1           68. For instance, LifeLock's advertisements omit and conceal the fact that its  
2 placement and continuous renewal of fraud alerts could actually prohibit its subscribers from  
3 obtaining credit.

4           69. Additionally, LifeLock's advertisements omit and conceal the fact that its  
5 placement and continuous renewal of fraud alerts could have an adverse impact on its  
6 subscribers' ability to obtain a home loan or refinance their existing loans.

7           70. LifeLock's advertisements also omit and conceal the fact that each time a fraud  
8 alert intercepts an attempt to obtain credit, an inquiry is created on the subscriber's credit profile,  
9 which can adversely affect the subscriber's credit score.

10                   **LIFELock OMITTS OR CONCEALS THE TRUE ORIGIN**  
11                   **OF THE CREDIT REPORT IT ORDERS FOR ITS SUBSCRIBERS**

12  
13           71. LifeLock represents to consumers that its services include a credit report from  
14 each of the three credit bureaus every twelve (12) months.

15           72. However, through its deceptive advertisements and marketing tools, LifeLock  
16 omits and conceals that the credit reports it orders on behalf of its subscribers are the free annual  
17 credit reports which subscribers are already entitled to receive without being LifeLock  
18 subscribers.

19           73. LifeLock also omits and conceals that by its ordering of the credit report, the  
20 subscribers are now rendered ineligible to order the free report on their own for the next 12  
21 months.

22           74. LifeLock further omits and conceals that ordering the free credit report from  
23 [www.annualcreditreport.com](http://www.annualcreditreport.com) is duplicative of the free credit report consumers are entitled to  
24 when placing a fraud alert under the Fair Credit Reporting Act, 15 U.S.C. § 1681c-1(a)(2)(B).

**LIFELock'S TERMS AND CONDITIONS ARE**  
**SUBSTANTIVELY AND PROCEDURALLY UNCONSCIONABLE**

75. The services LifeLock provides to its subscribers are purportedly governed by LifeLock's "Terms and Conditions."

76. LifeLock's "Terms and Conditions" are presented to consumers on a take-it-or-leave-it basis, in a standardized printed form, and therefore is a contract of adhesion.

77. LifeLock's "Terms and Conditions" are inadequate, unreasonable, fraudulent, and beyond the understanding of consumers.

78. None of LifeLock's subscribers, including Plaintiff and the putative class, had any bargaining power with which to negotiate the "Terms and Conditions."

79. Additionally, the LifeLock "Terms and Conditions" include an arbitration clause that purports to prohibit class actions.

80. This provision is meant to deter and eliminate any possibility for a consumer to seek redress for any grievances for the deceptive conduct perpetrated by LifeLock.

81. While LifeLock purports to pay all of the costs of a subscriber's arbitration, this representation is false and misleading, as it fails to take into account the significant ancillary costs incurred as a result of the subscriber being required to arbitrate his or her individual claims in the State of Arizona.

82. Such costs include, but are not limited to, travel to and lodging in Arizona for both the subscriber and his or her attorney.

83. Moreover, the LifeLock "Terms and Conditions" attempt to require subscribers to pay their attorney's fees and costs, regardless of whether they prevail in any arbitration.

84. Such attorney's fees and costs exponentially exceed the cost of LifeLock's subscription fee, which renders the individual pursuit of one's claims against LifeLock not feasible.

85. Accordingly, the arbitration provision does not allow LifeLock subscribers, including Plaintiff and the putative class, to adequately vindicate their rights.

1           86. Such a provision is so one-sided that it shocks the conscience, and is therefore  
2 unconscionable and unenforceable.

3                               **LIFELock MISREPRESENTS THE SCOPE**  
4                               **AND NATURE OF ITS \$1,000,000 SERVICE GUARANTEE**  
5

6           87. LifeLock further deceives consumers by touting its “one-million dollar service  
7 guarantee” in each of its advertisements.

8           88. Prior to August 22, 2007, LifeLock’s Terms and Conditions defined the  
9 \$1,000,000 guarantee at paragraph (I)(B)(9)(a) – (b), as follows:

10           a. Our Guarantee is simple. If you are our client when someone steals your  
11 personal information and subsequently misuses it, we will reimburse you any and  
12 all **direct expenses** that you incur and pay professionals with the proper expertise.  
13 The maximum amount that we will pay is \$1 million over the life of the incident.  
14 We provide the guarantee because we are so confident in our product. (emphasis  
15 added).

16           b. Direct expenses include **lost wages, long-distance calls, postage and**  
17 **other miscellaneous costs in addition to any funds that are actually stolen**  
18 **from you or a third party that holds you responsible.** If you need an attorney to  
19 help resolve the claims, we will select them and manage the case on your behalf.  
20 (emphasis added).

21  
22           89. On or about August 22, 2007, in response to an action commenced by the  
23 Oklahoma State Insurance Commissioner, LifeLock revised its Terms and Conditions to define  
24 its \$1,000,000 guarantee, at section “2,” paragraph “G,” as follows:

25           OUR GUARANTEE IS SIMPLE, BUT IT IS LIMITED. WE WON'T PAY MORE  
26 THAN \$1,000,000 TO CURE THE FAILURE OR DEFECT IN OUR SERVICE,  
27 PER CLIENT, PER LIFETIME, REGARDLESS OF CIRCUMSTANCE. WE  
28 WILL NOT REIMBURSE SPECIAL, INCIDENTAL, INDIRECT OR

1 CONSEQUENTIAL DAMAGES, SUCH AS LOST WAGES OR PROFITS,  
2 LOSS OF BUSINESS, OR LOST OPPORTUNITIES. OTHER THAN OUR  
3 GUARANTEE, WE MAKE NO REPRESENTATION OR WARRANTY ABOUT  
4 OUR SERVICE OF ANY KIND, AND WE DISCLAIM ANY IMPLIED  
5 WARRANTIES OUTSIDE OF OUR GUARANTEE, SUCH AS A WARRANTY  
6 OF MERCHANTABILITY OR FITNESS OF OUR SERVICE FOR ANY  
7 PARTICULAR PURPOSE.  
8

9 90. After further revision in or about December 2007, LifeLock's Terms &  
10 Conditions, presently define the \$1,000,000 guarantee at section "2," paragraph "G," as follows:

11 WE WILL PAY UP TO \$1,000,000 TO CURE THE FAILURE OR DEFECT IN  
12 OUR SERVICE, PER CLIENT, PER LIFETIME FOR ALL INCIDENTS IN  
13 THE AGGREGATE, REGARDLESS OF CIRCUMSTANCE...WE WILL NOT  
14 MAKE PAYMENTS TO YOU FOR ANY LOSS YOU MAY INCUR. OTHER  
15 THAN OUR SERVICE GUARANTEE, AND EXCEPT AS OTHERWISE SET  
16 OUT HEREIN WE MAKE NO REPRESENTATION OR WARRANTY ABOUT  
17 OUR SERVICE OF ANY KIND, AND WE DISCLAIM ANY IMPLIED  
18 WARRANTIES OUTSIDE OF OUR SERVICE GUARANTEE, SUCH AS A  
19 WARRANTY OF MERCHANTABILITY OR FITNESS OF OUR SERVICE  
20 FOR ANY PARTICULAR PURPOSE.  
21

22 91. Despite the fact that LifeLock's Terms and Conditions have been materially  
23 altered to severely limit the scope and application of the \$1,000,000 "guarantee," the message  
24 within each of LifeLock's advertisements, as it pertains to the "guarantee," has remained  
25 **entirely unchanged** - this is deceptive and misleading.

26 92. Specifically, despite Terms and Conditions to the contrary, all of LifeLock's  
27 advertisements continue to deceive subscribers into believing that they will be reimbursed up to  
28 \$1,000,000 for any and all financial losses sustained as a result of identity theft.

1           93.     Examples of such misrepresentations within LifeLock's advertisements include,  
2 without limitation, the following:

3           (a)     "With our million dollar guarantee, you have absolutely *nothing to lose* by  
4 signing up with us;"<sup>18</sup>

5  
6           (b)     "LifeLock will pay you up to \$1 million for damages stemming from the  
7 security breach. LifeLock says they will "make sure that you get every  
8 dollar back, lost wages, costs, actual losses, every dollar up to \$1,000,000.  
9 Period.;"<sup>19</sup> and

10  
11           (c)     "***GUARANTEED!*** -- If anyone steals your identity while you are a client,  
12 LifeLock will fix it. This is a \$1,000,000 guarantee. LifeLock will do whatever it  
13 takes to restore your good name and will pay the cost of doing so. LifeLock  
14 guarantees that you get every dollar back: lost wages, costs, actual losses -- every  
15 dollar."<sup>20</sup>

16           94.     In fact, as of the date this Complaint was filed, LifeLock's website includes a  
17 video clip under the heading "View Our Latest TV Ad Campaign" which shows CEO Todd  
18 Davis, addressing a crowd with a megaphone, proclaiming:

19           "[i]f anything happens, for any reason, while you are a client of LifeLock, **we will**  
20 **cover all losses and all expenses up to one million dollars.**"<sup>21</sup>

21           95.     As with each of LifeLock's advertisements, the above message is deceptive and  
22 misleading as it contradicts the true nature and scope of LifeLock's "guarantee" by deceiving  
23 subscribers into believing they will be reimbursed up to \$1,000,000 for financial losses incurred  
24 as a result of identity theft.

25  
26 <sup>18</sup> See <http://lifelockprotection.wordpress.com/2007/10/22/the-lifelock-guarantee/>, as of July 7,  
2008. (Emphasis added.)

27 <sup>19</sup> See <http://www.lifelocklife.com/million-dollar-guarantee.html>, as of July 7, 2008.

28 <sup>20</sup> See <http://lifelock.promotional-code.org/>, as of July 7, 2008.

<sup>21</sup> See <http://www.lifelock.com/lifelock-for-people/who-we-are/view-our-latest-tv-campaign>, as  
of July 7, 2008.

1           96. Contrary to the representations made in LifeLock's misleading advertisements,  
2 the confusing and misleading Terms and Conditions of the actual guarantee reveal protections  
3 that are significantly limited in comparison to those advertised.

4           97. In actuality, the narrow terms of LifeLock's service guarantee purport to disclaim  
5 all consequential damages and all liability for anything beyond a defect in their service.

6           98. Accordingly, the service guarantee is only enforceable when LifeLock fails to  
7 properly place a fraud alert or properly request to remove the subscriber from a pre-approved  
8 credit card or junk mail list.

9           99. This language is confusing and deceptive and intended to mislead and deter  
10 members from asking LifeLock to cover losses or pay for consequential damages such as hiring  
11 professionals to restore their losses, and to provide LifeLock with a basis for denying any such  
12 claims.

13           100. In addition, this language is inconspicuously embedded within LifeLock's  
14 "Terms & Conditions."

15           101. This language is completely contradictory to the misleading impression that is  
16 created by LifeLock's advertisements – namely, that subscribers will receive reimbursement up  
17 to \$1,000,000 for financial losses sustained as a result of identity theft.

18           102. For example, assume LifeLock properly places a fraud alert on a subscriber's  
19 credit profile. Now assume that a lender issues a credit card to an identity thief because that  
20 lender never called the subscriber. In that case, LifeLock would avoid having to make good on  
21 its service guarantee since it properly administered its services. This is deceptive.

22           103. In further contrast to the misrepresentations in its advertisements, in the event that  
23 the Service Guarantee is triggered, LifeLock is not required to "spend up to \$1,000,000.00 to  
24 make it right" or "cover all losses and all expenses up to one million dollars" under the Terms &  
25 Conditions."<sup>22</sup>

26           104. Rather, LifeLock would only be required to: (a) reimburse direct expenses the  
27 subscriber incurred up to \$1,000,000; and (b) assist and advise damaged subscribers by paying  
28

---

<sup>22</sup> See <http://www.lifelock.com/lifelock-for-people.aspx>, as of July 7, 2008.

1 third-party professionals up to \$1,000,000 to resolve the subscribers' damages, including,  
2 without limitation, damages to their credit profiles and credit ratings.

3 105. Contrary to the net impression created by each of its advertisements, LifeLock  
4 will not use the \$1,000,000 to actually recoup or reimburse any of the subscribers' financial  
5 losses.

6 **LIFELOCK MISREPRESENTS THE SECURITY OF**  
7 **SUBSCRIBERS' PERSONAL INFORMATION**  
8

9 106. LifeLock misrepresents its ability to maintain the security of its subscribers'  
10 personal and confidential information.

11 107. LifeLock subscribers who enroll on-line are required to furnish LifeLock with  
12 confidential sensitive personal information, including their social security numbers, which  
13 they submit over the internet to complete their on-line application.

14 108. LifeLock dedicates an entire page of its website to assuring subscribers that it  
15 "follows **industry best practices** to secure and protect [their] personal information."<sup>23</sup>

16 109. According to the LifeLock website, LifeLock is "ISO 27001 certified for data  
17 and operational security," and conducts "background checks on **all of our** employees,  
18 including regular random drug testing."<sup>24</sup>

19 110. The LifeLock website further states that "All of our facilities are built with the  
20 latest biometric security access as well as state-of-the-art surveillance and alarm systems,"  
21 and that "No computers anywhere outside of secure data centers have our member's critical  
22 information on them."<sup>25</sup>

23 111. Each of these representations is false and misleading.

24 112. Upon information and belief, LifeLock hires third-party contractors who work  
25 remotely from their homes.

26  
27 <sup>23</sup> [http://lifelock.com/lifelock-for-people/how-we-do-it/how-does-lifelock-secure-my-personal-](http://lifelock.com/lifelock-for-people/how-we-do-it/how-does-lifelock-secure-my-personal-information)  
information, as of July 7, 2008.

28 <sup>24</sup> Id.

<sup>25</sup> Id.

1 113. Upon information and belief, these third-party contractors possess, maintain,  
2 and/or have unfettered access to subscribers' social security numbers, credit card numbers,  
3 home addresses and dates of birth.

4 114. LifeLock does not conduct background checks on all of these third-party  
5 contractors.

6 115. LifeLock fails to implement any security measures or protocols to secure and  
7 protect subscribers' confidential and sensitive information once it has been accessed and is in  
8 the control or possession of these third-party contractors.

9 116. LifeLock's website is also vulnerable to compromise and as a result,  
10 LifeLock's subscription database is accessible by third-parties, including computer hackers.

11 117. As a result of the infirmity of the LifeLock website, the sensitive and  
12 confidential information provided by LifeLock subscribers, through the on-line enrollment  
13 application, can be accessed and misappropriated by third-parties, including computer  
14 hackers.

15 118. Upon information and belief, LifeLock has been advised of this lapse in  
16 security, and to date, has not resolved the problem.

17  
18 **LIFELOCK USES DECEPTIVE AND MISLEADING DATA TO SUBSTANTIATE**  
19 **THE EFFICACY OF ITS SERVICES**  
20

21 119. According to the LifeLock website, "[l]ast year alone, 3 percent of all Americans,  
22 that's 8.4 million people, were victims of real identity theft."<sup>26</sup>

23 120. LifeLock's website further states that "[a]nalysts at LifeLock, which protects the  
24 identities of over a million members, statistically would have expected to see 10,000 of its  
25 members experience identity thefts in just the first four months of 2008."<sup>27</sup>

26 121. LifeLock's website deceptively claims that "only 105 LifeLock members in the  
27 history of the company, or just over .01 percent of those protected by LifeLock, have ever

28 <sup>26</sup> <http://www.lifelock.com/todd-davis?promocode=ADCONION>, as of July 7, 2008.

<sup>27</sup> Id.

1 reported their identities stolen – and LifeLock ‘s \$1 Million Total Service Guarantee completely  
2 covered every one of them.”<sup>28</sup>

3 122. Upon information and belief, LifeLock’s claim that its “\$1 Million Total  
4 Service Guarantee completely covered every one<sup>29</sup>” of those subscribers whose identity was  
5 stolen is **patently false**

6 123. This statistic appears in numerous LifeLock advertisements and LifeLock CEO  
7 Davis has boasted about this “statistical data” during countless appearances on television, radio,  
8 and streaming internet video.

9 124. This “statistical data” is just another misleading piece of information meant to  
10 induce potential subscribers to enroll in LifeLock.

11 125. Specifically, the reason that “only 105 LifeLock members in the history of the  
12 company...have ever reported their identities stolen” is because LifeLock’s definition of identity  
13 theft is extremely narrow.

14 126. LifeLock intentionally defines identity theft to pertain to only credit-related  
15 instances of theft to allow for the perpetration of its’ fraudulent and deceptive scheme.

16 127. In contrast to LifeLock’s inadequate definition of identity theft, the Federal Trade  
17 Commission employs a much broader meaning.

18 128. The FTC defines identity theft as occurring when someone “uses your personally  
19 identifying information, like your name, Social Security number, or credit card number, without  
20 your permission, to commit fraud or other crimes.”<sup>30</sup>

21 129. The FTC further provides examples of the frauds that are being committed with  
22 misappropriated identity information, which include: (i) “credit card fraud”; (ii) “phone and  
23 utilities fraud”; (iii) “bank/finance fraud”; (iv) “government documents fraud”; and (v) “medical  
24 information fraud.”<sup>31</sup>

25  
26 <sup>28</sup> Id.

27 <sup>29</sup> Id.

28 <sup>30</sup> <http://www.ftc.gov/bcp/edu/microsites/idtheft/consumers/about-identity-theft.html#Whatisidentitytheft>, as of July 7, 2008.

<sup>31</sup> Id.

1 130. Since LifeLock's service can only protect against new-account, credit related  
2 fraud, the statistics LifeLock uses in its advertisements and testimonials to "illustrate" the  
3 efficacy of its services are misleading and deceptive.

4 **THE PLAINTIFF ROBERT DILLON**

5 131. In or about April 2008, Plaintiff Dillon decided to subscribe to LifeLock after  
6 viewing the company's television advertisements and hearing the company's radio  
7 advertisements.

8 132. Based on those advertisements, Dillon was lead to believe that LifeLock would  
9 provide him with comprehensive protection against all forms of identity theft.

10 133. Dillon's decision to subscribe to LifeLock was also heavily based on the  
11 company's purported One Million Dollar (\$1,000,000) service guarantee, which, he was led to  
12 believe, would reimburse him for any financial damage sustained by a subscriber as a result of  
13 identity theft.

14 134. Upon information and belief, as a result of its fraudulent campaign, LifeLock has  
15 generated nearly one million subscribers, each of whom pay approximately One Hundred and  
16 Ten Dollars (\$110.00) per year for its "services."

17 135. Thus, by virtue of LifeLock's deceptive scheme, its subscribers have each  
18 suffered an ascertainable loss in the form of the subscription fees they pay for services that: (a)  
19 do not provide the level of identity protection advertised; (b) may actually impair their ability to  
20 obtain credit or financing; and (c) provide a service guarantee that is, at best, illusory.

21 **CLASS ALLEGATIONS**

22 136. This action is brought as a class action pursuant to Cal Code Civ. Proc. § 382,  
23 on behalf of the named Plaintiff and all others similarly situated.

24 137. The legal claims at issue in this matter are questions of common or general  
25 interest, of many persons, and the parties are numerous, it is impracticable to bring them all  
26 before the court.

27 138. The class is tentatively defined as:

28 All residents of the state of California (including persons and business entities)

1 that subscribed to LifeLock during the longest period permitted by the  
2 applicable statutes of limitations. Excluded from the Class are the officers,  
3 directors and employees of Defendants and their respective legal  
4 representatives, heirs, successors and assigns.

5  
6 139. Upon information and belief, the class has more than 1,000 members  
7 (including present and past subscribers).

8 140. All members of the class assert claims for violation of the law as more  
9 particularly set forth herein.

10 141. All class members pray for money damages.

11 142. All class members pray for temporary and permanent injunctive relief, as well  
12 as declaratory relief, because the parties opposing the class have acted on grounds generally  
13 applicable to the class, thereby making appropriate injunctive relief to the class as a whole.

14 143. The proposed class meets the criteria set forth for the maintenance of a class  
15 action as described below.

16 144. **Numerosity:** Members of the class are so numerous that their individual  
17 joinder is impractical. The precise identities, number and addresses of members of the class  
18 are unknown to Plaintiff, but may and should be known with proper and full discovery of  
19 Defendants, third-parties, and their respective records.

20 145. **Existence of Common Questions of Fact:** The common nucleus of operative  
21 facts to be determined for the class as a whole center upon the deceptive advertising and  
22 marketing campaign employed by LifeLock and its agents in California. The questions of  
23 fact common to class members include, but are not limited to, the deceptive advertising and  
24 marketing campaign described herein.

25 146. **Existence of Common Questions of Law:** There is a well-defined  
26 commonality and community of interest in the questions of fact and law affecting the  
27 members of the class. The common questions of fact and law include, among other things:

28 (a) Whether and to what extent Defendants' practices, conduct, and

1 misrepresentations violate California state law;

2 (b) Whether Defendants' fraudulent and deceptive marketing and  
3 advertising campaign constitutes an unlawful, unfair or fraudulent  
4 business act or practice within the meaning of the California Unfair  
5 Competition Law, *Cal Bus & Prof Code § 17200, et seq.*;

6 (c) Whether Defendants disseminated or caused to be made or disseminated  
7 before the public in this state, in any newspaper or other publication, or  
8 any advertising device, or by public outcry or proclamation, or in any  
9 other manner or means whatever, including over the Internet, any  
10 statement, concerning those services, professional or otherwise, or  
11 concerning any circumstance or matter of fact connected with the  
12 proposed performance thereof, which is untrue or misleading, and which is  
13 known, or which by the exercise of reasonable care should be known, to  
14 be untrue or misleading, in violation of the False Advertising Act, *Cal Bus*  
15 *& Prof Code § 17500, et seq.*;

16 (d) Whether Defendants engaged in and unfair or deceptive acts or practices  
17 by representing that LifeLock's services have sponsorship, approval,  
18 characteristics, uses, benefits, or quantities which they do not have in  
19 violation of *Cal Civ Code § 1770*;

20 (e) Whether Defendants engaged in and unfair or deceptive acts or practices  
21 by advertising LifeLock's services with intent not to sell them as  
22 advertised in violation of *Cal Civ Code § 1770*;

23 (f) Whether Defendants engaged in and unfair or deceptive acts or practices  
24 by inserting unconscionable provisions LifeLock's Terms and Conditions,  
25 in violation of *Cal Civ Code § 1770*;

26 (g) Whether Defendants' intended for Plaintiffs to rely on their deceptive and  
27 misleading advertisements in making their determination to enroll with  
28 LifeLock;

- 1 (h) Whether Plaintiffs and the putative class sustained injuries in fact, or
- 2 monetary losses as a result of Defendants' fraudulent and deceptive
- 3 marketing and advertising campaign;
- 4 (i) Whether Defendants' affirmative statements and material omissions
- 5 constitute an unfair or deceptive act or practice;
- 6 (j) Whether LifeLock's radio, television, internet and print advertisements
- 7 contained fraudulent representations and omissions;
- 8 (k) Whether the arbitration provision in the LifeLock "Terms &
- 9 Conditions" is unconscionable and unenforceable;
- 10 (l) Whether the class action prohibition provision in the LifeLock "Terms
- 11 & Conditions" is unconscionable and unenforceable;
- 12 (m) Whether the exculpatory provision dealing with attorney's fees and costs
- 13 contained in the LifeLock "Terms & Conditions" is unconscionable and
- 14 unenforceable;
- 15 (n) Whether Plaintiff and the putative class are entitled to recover
- 16 compensatory, exemplary, statutory, minimum, and/or punitive
- 17 damages, based on Defendants' fraudulent and illegal conduct or
- 18 practices;
- 19 (o) Whether Plaintiff and the putative class are entitled to restitution and/or
- 20 disgorgement of any ill-gotten gains; and
- 21 (p) Whether Plaintiff and the putative class are entitled to an injunction,
- 22 enjoining LifeLock from further engaging in the deceptive practices
- 23 alleged herein.

24 147. **Typicality:** Plaintiff is a member of the class. Plaintiff's claims have a  
 25 common origin and share common bases. His claims originate from the same illegal and  
 26 fraudulent practices of Defendants, and Defendants act in the same way toward Plaintiff and  
 27 the class members. If brought and prosecuted individually, the claims of each putative class  
 28

1 member would necessarily require proof of the same material and substantive facts, rely  
2 upon the same remedial theories, and seek the same relief.

3 148. **Adequacy of Representation:** Plaintiff can and will fairly and adequately  
4 represent and protect the interests of all members of the class. He has no interests that  
5 conflict with or are antagonistic to the interests of the class members, and intends to  
6 prosecute this action vigorously. Plaintiff has retained the undersigned counsel who are  
7 competent and experienced in class action and complex commercial litigation. As such,  
8 Plaintiff's counsel will fairly and adequately protect the interests of the class.

9 149. Plaintiff's counsel will fairly and adequately protect the interests of the class.

10 150. **Superiority:** A class action is superior to any other available method for the  
11 fair and efficient adjudication of this controversy, because: (a) common questions of law and  
12 fact overwhelmingly predominate over any individual questions that may arise, such that  
13 there will be efficiencies to the courts and the parties in litigating the common issues on a class  
14 basis rather than on an individual basis; (b) the damages to some class members are larger than  
15 to others, but all claims are sufficiently small that individual prosecution of the claim would  
16 not be an economically viable alternative; (c) class treatment is desired for optimal  
17 deterrence and compensation; (d) the economies of scale inherent in litigating similar claims  
18 on a common basis will enable this case to be litigated on a cost-efficient basis as a class  
19 action, especially when compared to repetitive individual actions; (e) no unusual difficulties  
20 are likely to be encountered in the management of this class action as the proofs as to liability  
21 are common to all class members; and (f) this action would be effectively impossible to bring  
22 as individual actions leaving Plaintiff and others similarly situated with no viable remedy.

### 23 **FIRST COUNT**

### 24 **VIOLATION OF UNFAIR COMPETITION LAW**

### 25 **Cal Bus & Prof Code § 17200, et seq.**

26  
27 151. Plaintiff realleges and incorporates herein the allegations contained in the  
28 preceding paragraphs.

1           152. The acts and practices alleged herein were and are likely to mislead the general  
2 public and are unfair business practices within the meaning of *Business and Professions Code §*  
3 *17200 et seq.*

4           153. The acts and practices alleged herein were and are likely to mislead the general  
5 public and are unlawful business practices within the meaning of *Business and Professions Code §*  
6 *17200 et seq.*

7           154. The acts and practices alleged herein were and are likely to mislead the general  
8 public and are fraudulent business practices within the meaning of *Business and Professions Code §*  
9 *17200 et seq.*

10           155. *Business and Professions Code § 17200* imposes strict liability upon the Defendants  
11 for the deceptive, unlawful, unfair and fraudulent acts as alleged herein, which were intended to and  
12 in fact did mislead the general public, including Plaintiff, within this state.

13           156. Defendants deceptive advertisements, marketing scheme and general conduct  
14 are practices within the meaning of the *Business and Professions Code § 17200*.

15           157. Defendants violation of *Business and Professions Code § 17500* as alleged herein  
16 this complaint is a violation of the *Business and Professions Code § 17200*.

17           158. Every single advertisement in the above reference advertising campaign included  
18 misrepresentations which were meant to create the net impression that: (i) all LifeLock  
19 subscribers were provided comprehensive protection from all forms of identity theft; and (ii) all  
20 LifeLock subscribers would be reimbursed, up to one-million dollars (\$1,000,000) for any  
21 financial losses sustained as a result of identity theft.

22           159. Defendants intended for the Plaintiffs and the putative class to rely on those  
23 universal misrepresentations and omissions contained within LifeLock's advertisements as a  
24 means to induce them to enroll with LifeLock, and the Plaintiffs and the putative class did in fact  
25 rely on said misrepresentations and omissions.

26           160. Plaintiffs and the putative class have paid money to LifeLock, in the form of  
27 monthly or annual subscription fees.  
28

1           161. The subscription fees paid by the Plaintiffs and the putative class constitute  
2 injuries in fact and money lost as a result of Defendants' deceptive conduct.

3           162. Based on Defendants violations of *Business and Professions Code § 17200*,  
4 Plaintiffs are entitled to disgorgement of all ill-gotten gains, including without limitation all fees  
5 collected by Defendants from the Plaintiff and the Class.

6           163. Based on Defendants violations of *Business and Professions Code § 17200*,  
7 Defendants are entitled to restitution.

8           164. Based on Defendants violations of *Business and Professions Code § 17200*,  
9 Defendants are entitled to injunctive relief to require Defendants to cease any and all deceptive  
10 advertisements and to take all necessary corrective measures with respect to the manner and  
11 substance of its advertisements.

12                               **SECOND COUNT**

13                               **VIOLATION OF THE FALSE ADVERTISING LAW**

14                               **Cal Bus & Prof Code § 17500, et seq.**

15  
16           165. Plaintiff realleges and incorporates herein the allegations contained in the  
17 preceding paragraphs.

18           166. Defendants purportedly sell and provide identity theft protection services to the  
19 public throughout the United States, including those residents of this state.

20           167. Defendants purportedly sell and provide a one-million dollar (\$1,000,000) service  
21 guarantee in connection with those purported identity theft protection services.

22           168. In furtherance of the sale of the above referenced "services" and "guarantee,"  
23 Defendants engaged in a misleading and deceptive advertising campaign which is deployed  
24 through print media, television, radio, and the internet, and which reaches and impacts the  
25 residents of this state, including the Plaintiff.

26           169. Through the above referenced advertising campaign, Defendants have  
27 disseminated or caused to be made or disseminated directly to Plaintiff and the general public in  
28 this state, statements concerning the performance of those "services" and the "guarantee"

1 thereof, which is untrue or misleading, and which is known, or which by the exercise of  
2 reasonable care should be known, to be untrue or misleading.

3 170. Every single advertisement in the above reference advertising campaign included  
4 misrepresentations which were meant to create the net impression that: (i) all LifeLock  
5 subscribers were provided comprehensive protection from all forms of identity theft; and (ii) all  
6 LifeLock subscribers would be reimbursed, up to one-million dollars (\$1,000,000) for any  
7 financial losses sustained as a result of identity theft.

8 171. Defendants intended for the Plaintiffs and the putative class to rely on those  
9 universal misrepresentations and omissions contained within LifeLock's advertisements as a  
10 means to induce them to enroll with LifeLock, and the Plaintiffs and the putative class did in fact  
11 rely on said misrepresentations and omissions.

12 172. Plaintiffs and the putative class have paid money to LifeLock, in the form of  
13 monthly or annual subscription fees.

14 173. The subscription fees paid by the Plaintiffs and the putative class constitute  
15 injuries in fact and money lost as a result of Defendants' deceptive conduct.

16 **THIRD COUNT**

17 **VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT**

18 **Cal Civ Code § 1750, et seq.**

19 174. Plaintiff realleges and incorporates herein the allegations contained in the  
20 preceding paragraphs.

21 175. Defendants purportedly sell and provide identity theft protection services to the  
22 public throughout the United States, including those residents of this state.

23 176. Defendants purportedly sell and provide a one-million dollar (\$1,000,000) service  
24 guarantee in connection with those purported identity theft protection services.

25 177. In furtherance of the sale of the above referenced "services" and "guarantee,"  
26 Defendants engaged in a misleading and deceptive advertising campaign which is deployed  
27 through print media, television, radio, and the internet, and which reaches and impacts the  
28 residents of this state, including the Plaintiff.

1           178. Through the above referenced advertising campaign, Defendants have  
2 disseminated or caused to be made or disseminated directly to Plaintiff and the general public in  
3 this state, statements concerning the performance of those "services" and the "guarantee"  
4 thereof, which is untrue or misleading, and which is known, or which by the exercise of  
5 reasonable care should be known, to be untrue or misleading.

6           179. Through the above referenced advertising campaign, Defendants engaged in  
7 unfair or deceptive acts or practices by representing that LifeLock's services have sponsorship,  
8 approval, characteristics, uses, benefits, or quantities which they do not have.

9           180. Through the above referenced advertising campaign, Defendants engaged in  
10 unfair or deceptive acts or practices by advertising LifeLock's services with intent not to sell  
11 them as advertised.

12           181. Through the above referenced advertising campaign, Defendants engaged in  
13 unfair or deceptive acts or practices by inserting unconscionable provisions LifeLock's Terms  
14 and Conditions.

15           182. In a letter dated May 30, 2008, thirty (30) days prior to the Amendment of this  
16 Complaint to include this cause of action for violations of *Cal Civ Code § 1750, et seq.*,  
17 Plaintiff Robert Dillon notified LifeLock's Member Services Department that LifeLock was  
18 employing and committing methods, acts, or practices declared unlawful by § 1770.

19           183. In that letter, Plaintiff Dillon demanded that the LifeLock "revise the language  
20 used in its advertisements and the messages delivered through the television, radio and internet  
21 to reflect the true and actual nature of the services offered and LifeLock's limited 'guarantee.'"

22           184. Plaintiff Dillon's notice was in writing and was sent to LifeLock by certified  
23 mail, return receipt requested.

24                           **FOURTH COUNT**

25                           **UNJUST ENRICHMENT**

26  
27           185. Plaintiff realleges and incorporates herein the allegations contained in the  
28 preceding paragraphs.

1 186. Defendants have, by virtue of payments made by Plaintiff and others like him  
2 throughout the State of California, received hundreds of thousands of dollars in payments and  
3 have not provided the services that were promised and/or advertised.

4 187. Defendants have, therefore, received a benefit from Plaintiff and others like him,  
5 the receipt of which constitutes unjust enrichment to Defendants.

6 188. The Plaintiff and others like him are entitled to an award of damages or restitution  
7 consisting of the amounts that they paid to LifeLock and all other Defendants known or  
8 unknown

9 **FIFTH COUNT**  
10 **DECLARATORY JUDGMENT**  
11

12 189. Plaintiff realleges and incorporates herein the allegations contained in the  
13 preceding paragraphs.

14 190. In addition to the extremely one-sided terms included in its form adhesive  
15 "Terms and Conditions," LifeLock has included procedural obstacles, which intend to  
16 discourage claims against it and/or attempt to shield it from any liability.

17 191. These aforementioned provisions are unenforceable.

18 192. The provisions include, *inter alia*:

19 (a) Paragraph "11" requiring that all claims or disputes against LifeLock  
20 be governed by the laws of the State of Arizona; and

21  
22 (b) Paragraph "12" requiring that: (i) any disputes or controversies arising  
23 from the "Terms & Conditions," against LifeLock, be settled by confidential  
24 arbitration; (ii) the subscriber agree not to participate in any dispute against  
25 LifeLock as a class representative or as a member of a putative class; and (iii)  
26 the subscriber pay his or her attorney's fees and costs.

1 193. The onerous provisions in the form adhesive franchise agreement are violative  
2 of California public policy and shall be declared void and unenforceable.

3 194. Plaintiff is therefore entitled to a declaration from the Court that the LifeLock  
4 "Terms and Conditions," are void and unenforceable, or in the alternative, the Court shall  
5 strike those provisions that are unenforceable.

6 **INJUNCTIVE RELIEF**

7  
8 Plaintiff realleges and incorporates herein the allegations contained in the  
9 preceding paragraphs.

10 1. As a result of the foregoing, and because money damages are inadequate to fully  
11 compensate Plaintiff and others similarly situated, or to prevent further instances of the future  
12 violations, preliminary and permanent injunctive relief is warranted as follows:

13 a. LifeLock shall cease advertising its services in California, unless and until all  
14 advertisements are revised to include language that is neither deceptive or  
15 misleading; and

16 b. LifeLock shall be permanently enjoined from implementing the marketing  
17 scheme described herein or incorporated by reference.

18  
19 **WHEREFORE**, Plaintiff, individually and on behalf of all others similarly situated,  
20 respectively prays for the following relief:

21 a. That the Court enter an Order certifying the proposed class herein and  
22 appointing Plaintiff and the undersigned counsel of record to represent the class;

23 b. That the Court enter an Order rescinding the LifeLock subscription of Plaintiff  
24 and each and every member of the putative class based on Defendants' fraudulent  
25 inducement thereof or, alternatively, damages for said fraudulent conduct;

26 c. That the Court issue a preliminary injunction enjoining Defendants and all  
27 others, known and unknown, from continuing to engage in unlawful conduct as set forth in  
28 this Complaint pending a determination of the merits;

1 d. That the Court issue a permanent injunction enjoining Defendants and all  
2 others, known and unknown, from continuing to engage in unlawful conduct as set forth in  
3 this Complaint;

4 e. That the Court enter a declaratory judgment, declaring those offensive and  
5 unlawful provisions contained within the "Terms & Conditions" entered into by Plaintiff and  
6 each and every member of the putative class void and unconscionable and, therefore,  
7 unenforceable;

8 f. That the Court enter a declaratory judgment declaring the acts of Defendants to be  
9 in violation of *Cal Bus & Prof Code § 17200, et seq.*;

10 g. That the Court enter a declaratory judgment declaring the acts of Defendants to be  
11 in violation of *Cal Bus & Prof Code § 17500, et seq.*;

12 h. That the Court enter a declaratory judgment declaring the acts of Defendants to be  
13 in violation of *Cal Civ Code § 1750, et seq.*;

14 i. That the Court enter a declaratory judgment declaring that the LifeLock "Terms  
15 and Conditions," are void and unenforceable, or in the alternative, the Court shall strike  
16 those provisions that are unenforceable

17 j. That Plaintiff, and each member of the putative class, be awarded damages for  
18 each violation of law alleged herein;

19 k. That Plaintiff, and each member of the putative class, be awarded punitive  
20 damages against Defendants, in an amount to be determined at trial, for the willful, wanton  
21 and/or reckless disregard for their legal rights;

22 l. That Plaintiff, and each member of the putative class, be awarded costs and a  
23 reasonable attorney's fee, and/or the general authority of this Court;

24 m. That Plaintiff, and each member of the putative class, be awarded any and all  
25 additional compensatory, incidental and consequential damages, in an amount to be determined  
26 at trial;

27 n. That Plaintiff, and each member of the putative class, be awarded prejudgment  
28 and post-judgment interest on any and all of the foregoing damages, and

1           o.       That Plaintiff, and each member of the putative class, be awarded such further and  
2 general relief – both legal and equitable – as this Court may deem appropriate.

3                               **DEMAND FOR TRIAL BY JURY**

4           Plaintiff demands a trial by Jury as to all issues.

5  
6 Dated: July 22, 2008

**FREEDMAN & TAITELMAN, LLP**

7  
8  
9 By: 

10 Michael A. Taitelman, Esq.  
11 Attorneys for Plaintiffs  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28